VOL. XXXVII, No. 43.

# SUPREME COURT DECIDES AGAINST WALTER G. SMITH

# Frear and Galbraith Uphold Action of the Circuit Court In Contempt Case.

Perry, In a Strong Opinion, Dissents From the Court's Opinion and Holds That Constructive Contempt Cannot Be Punished.

PTER more than two months of deliberation a majority of the Supreme Court yesterday affirmed the decision of the Circuit Court, adjudging Walter G. Smith, Editor of the Advertiser, guilty of contempt, and remanding him to the custody of the High cheriff to serve a term of thirty days imprisonment.

As there appears to be a Federal question involved Mr. Smith's atterneys will present their application for a writ of habeas corpus to the United States District Court this morning and push the matter to the last step before abandoning it.

to prison for thirty days.

There were but few people in the garded as constructive contempts, and court room yesterday afternoon at 3 the publication in question clearly cleck, when the three Justices filed comes within at least one of the classes places on the bench. Mr. Smith was If, therefore, this should be regard room when the judgment was given.

been given to Clerk George Lucas. Davis got possession of the original and after it had been shown to a few attorneys, he hurried into the clerk's office, where Judges Humphreys and Gear were in waiting. They spent the next hour in poring over its pages and commenting on the opinions of the three Judges. Mr. Smith was at once placed in the custody of Sheriff Chil-

ESTEE WOULD ISSUE WRIT.

In the meantime attempt was made to secure a new writ from Judge Estee. but because of the lateness of the hour this was given up until morning. Judge Estee very accommodatingly agreed to wait until 5 o'clock to sign the papers and stated that he would issue the writ of habeas corpus and hold court at o'clock in the evening to hear the matter if the attorneys so desired. The attorneys found it impossible to prepare the necessary papers and further action was postponed until this morning. THE DECISION.

The decision of the Supreme Court remanding the prisoner to the custody of the High Sheriff is a voluminous one. It is written by Chief Justice Frear, and Justice Galbraith writes a encurring opinion. Justice Perry dissents and also has a lengthy opinion. 'the following is the syllabus' governing the opinion of the majority:

"On habeas corpus to test the validity of a judgment for contempt the diction only and not questions of mere

irregularity of error. 'All reasonable intendments are made in favor of the jurisdiction of superfer court of record when their judg-

ments are attacked collaterally. Whether an answer under oath by one cited for contempt operates as a purger or not depends on the circum-

"Whether all three Judges of the First Circuit may act together as a court or not is immaterial if, they do sit together, the presiding Judge for the term substantially conducts the proceedings and finally pro counces judgment as if he alone conthe court, the others being deemed to act in an advisory capacity

eanly. The opinions are as follows: OPINION OF THE COURT, BY

FREAR, C. J. The facts and much of the law are set forth in Mr. Justice Perry's dissenting opinion. The case is one of preme Court) committed a quarter of

great difficulty. There is no doubt that the publication in question would be held a contempt at common law-whether it should be regarded as relating to a pending case or to a terminated case or to the Judge generally without reference to any particular case, or whether it was in the presence of the There is also no doubt that it should be held a contempt un- | courts, and remanded the petitioner to our statutes. If the decision in the custody.

"In the case of ex parte Walter G. Bush case, 8 Haw, 221, should be fol-smith, the court remands the prisoner lowed; for, according to that decision, to the custody of the High Sheriff; the the Legislature in providing, by the epinion of the court will be filed." With act of 1898 (P. L. Sec. 262), that conthese words from Chief Justice Frear, structive attempts should no longer be the Supreme Court, Justice Perry dis-punishable as such, regarded as con-senting, yesterday affirmed the decision structive attempts only those that were of the Circuit Court, finding Mr. Smith not enumerated in the previous statute guilty of contempt and sentencing him (P. L. Sec. 257) and did not mean to include all those that are generally re-

If, therefore, this should be regarded present in person, and was represented as a case of constructive contempt unby Smith & Lewis and Lorrin Ander the general law, the main question drews, while George Davis appeared for for consideration would be whether the the Circuit Judges, who remained out-decision in the Bush case should be side in the cierk's office as the decision followed or reversed. Assuming that was announced. There were besides the decision was sound when it was was announced. There were besides the decision was sound when it was three or four attorneys in the court rendered, there might still be a question whether the publication, if it could cover the same or nearly the same be considered as relating only to the ground, the one referring for the facts Following the order made by Chief be considered as relating only to the Justice Frear the members of the terminated case or to the Judge gencourt left the room, the opinion having erally, and not to the pending case, terminated case or to the Judge early, and not to the pending case, was issued, the other purporting could be regarded as a contempt punforth the facts and, among other things, stating that the published matchings, stating that the published matchings false malicious, etc., and had come under the provisions of the Federal Constitution relating to freedom of special reference to the case on trial the circumstances under which is special reference to the case on trial the circumstances under which the though not differing materially from the corresponding constitutional protection of the provision of the Federal Constitution relating to freedom special reference to the case on trial the circumstances under which the difference is the case on trial the circumstances under which the corresponding was made, assuming that in was circulated and published in the course of the case. though not differently from the corresponding constitutional pro-the corresponding constitutional pro-visions in force here when the Bush that it was calculated to and did preju-case was decided, might perhaps be construed differently to some extent.

fact. We may have found it such if purports to be a transcript of the or in the adjoining hall or room, if the Many questions are presented, we had passed upon the question in the stenographer's notes of the proceed-other necessary conditions were presfirst instance, or we might find it such ings shows only one conviction, which ent. It is not clear whether the court if the case were here on appeal, or refers to the affidavit for the facts. It was in session or not. Perhaps that perhaps even on writ of error. But contains also an oral opinion delivered also would be immaterial, if it was must we regard it as such in these by another Judge who was with the during a recess merely or temporary habeas corpus proceedings? The Cir-trial Judge on the bench; also the tes-adjournment from one day to the next, cuit Court is a court of general and timony of certain witnesses, which and if the other essential features were superior jurisdiction. Contempt cases shows that the jurors in the pending present. It is not clear whether the view by writ of error under our stat- lication in the hall and room adjoin- publication or circulation in or near utes. Habeas corpus is a collateral ing the court room, if not in the court the court room or not. This is very mere irregularities and errors cannot be inquired into as on appeal or erculation in or near the court room as the publication and circulation there still pending and the case undeterminror; only questions of jurisdiction can distinguished from the city at large, as a natural and probable consequence ed, The Pacific Commercial Advertiser, inquired into, and every presumption is indulged in support of the juris- in session at the time. Whether the paper or such general circulation in this city, of which newspaper the presiding of a superior court. On appeal presiding Judge himself saw the paper the city where the trial was pending, ent petitioner was then the editor, con or error, judgments of superior courts, may be set aside, if jurisdiction does not appear on the face of the record. but on habeas corpus they may be set

tively appears to be wanting. In Cuddy, Petitioner, 131 U. S. 280. set forth in the judgment, but it did mile from the court house and when the court was not in session. The court tition for the writ nor the part of the record of the lower court that was produced showed the particular locality where the act was committed, and that upon a collateral attack by habeas cor-

The present case is before us in a nesses

A NEW SAINT TO THE RESCUE

mus seems to refer to two convictions. both, however, apparently intended to its duties in the trial

at least if the jurisdiction is limited, the trial does not appear except by the sponsible is a nice question, the affirm- printed words said to be of and conaside only when jurisdiction affirma- to show that it does not, nor is the the petitioner in support of the negathe petitioner sought release on habeas stenographer, nor was it made a part remand the petitioner to custody, in corpus from a judgment of contempt. of the record in this court, nor does it any view that can properly be taken of The act constituting the contempt was purport to have been filed or to be a the case on the evidence, should be re- marily punished for contempt of court not appear whether the act was com- would be justified, however, in over- question-upon which no argument has iter "did make and publish for circumitted in the presence of the court or looking these irregularities as counsel not and so whether it was covered by on both sides have taken it for granted the statute or not. Counsel contended that the transcript was complete and strensously urged contra. that the act was not committed in the a part of the record. The affidavit court building or while the court was sets forth in substance that the petiin session, and that the case was there- tioner made and published for circula- able under our statutes, and this case respect upon the Honorable George D. fore distinguishable from another case tion the matter in question, intending that was argued and decided at the thereby to throw disrespect upon the same time, in which it was held that Judge and to present the former acan act committed in a room near the tion in a ludicrous, etc., manner, and intermediate necessary findings upon cartoon or picture intending to and atcourt room and while the court was in to prejudice the case in the minds of session was "in the presence" of the the public and jury trying the cause. It appeared that the act consist- and that by reason of said published ed of an attempt to influence one who matter and intending to publish an- affirmative showing of want of jurisdic- George D. Gear, in his official and juhad been impanelled as a juror for the imadversions on the evidence or proterm but before he was called for the ceedings in a pending trial tending to outside of the record, the judgment the case of said defendant in the minds particular case. Apparently it was in prejudice the public respecting fact (as appeared by the record of the same and to prevent and obstruct the lower court, in re Cuddy, 40 Fed. R. administration, and by knowingly pub-62, but not by the record in the Su-lishing an unfair report of the proceedings of the court and malicious invectives against the court and jury tending to bring the administration of said in substance that neither the pe- justice into contempt, etc., did commit a contempt of court. No allegation was made in the petition, nor was any ffer made in this court to show just where or under what circumstances the publication and circulation took place, pus every intendment was made in nor was any attempt made to show ant and was joined in by the presiding such court and jury, and the adminis support of the jurisdiction of superior these things in the lower court by the Judge, and before the end of the case tration of justice into ridicule, con-

very unsatisfactory state. The mitti- manner than by the petitioner's an- alone finally pronounced judgment in such same to refer to two convictions swer, under oath, denying knowledge form as if he alone constituted the of the penderey of the second case and alleging that the publication related to the first case only.

The contention that the petitioner thereby purged himself of the contempt cannot avail in this collateral proceeding, considering that the lower court found against him and considering all the circumstances under which that finding was made, assuming that in our

are not appealable or subject to re- case saw the alleged contemptuous pub- petitioner had anything to do with the proceeding. In a collateral proceeding room itself, but does not show what material, unless the petitioner should nor does it show whether the court was of the publication and circulation of a circulated in the court room during Whether he should be thus held rerecital in the mittimus. The transcript ative being held by very respectable does not indicate that it contains all authority, and no argument or authorthe evidence, though there is nothing ity having been presented on behalf of usual stenographer's certificate attach- tive. Whether the decision in the Bush ed to it, though it is signed by the case which, if followed, requires us to titioner, although that decision is most

If, as is the case in some other jurisdictions, contempt cases were appealwhich the final judgment is based, the result might perhaps be different. But tion either by the record or by matter the cannot be set aside in a collateral proceeding.

The fact that all three Judges of the they seem to have regarded themselves tice: together as constituting the court, yet unfair report of the proceedings of the the part that the Judges other than court, and malicious invectives against the presiding Judge took was unimport- the court and jury tending to bring testimony of the witnesses for the pe- the view was apparently taken that the titioner or on cross examination of wit- two former were there in an advisory

Gazette.

fertile themes for comment, but it is unnecessary to discuss them. The petitioner is remanded

custody of the High Sheriff. Smith & Lewis and Andrews, Peters Andrade, for the petitioner. George A. Davis, contra.

DISSENTING OPINION OF PERRY, J.

The petitioner was sentenced to imprisonment for the term of thirty days

yound our most sanguine hopes.

In the earlier stages of tubercle deposits in the skin, such as I have frefor an alleged contempt of the Circuit quently seen in years long past, I Court of the First Circuit and then brought this petition for a writ of habers for the local lesion. Of course, bear cornus to determine the design of the local lesion. See State v. Circuit Court, 97 Wis. 1. calculated to and did obstruct the court found that the publication or circuit-court of the First Circuit and then But must we regard this as a case of in the administration of justice, and tion took place in the court room or brought this petition for a writ of hadetermine the legality eral law? It may have been such in then pending and undetermined. What rial whether it was in the court room of such sentence and commitment.

One McCarthy was tried in the Circuit Court upon a charge of mayhem. Thereafter, upon motion of counsel, the court discharged the defendant on the ground that there is no such crime known to our law as mayhem. was on March 5, 1902. On March 11, McCarthy was arraigned before the same court on a charge of assault and battery based on the same acts, and the trial was begun. In its issue of the the petitioner had to do with its cir- be regarded as responsible in law for day following, and while the trial was a newspaper printed and published in the city where the trial was pending, ent petitioner was then the editor, contained a certain cartoon and certain cerning the Hon. George D. Gear, who was the Judge presiding at the trials referred to. One of the attorneys for the defendant on the day last named presented to the court a motion or affidavit praying that the editor of The Advertiser be cited to appear and show cause why he should not be sumpart of the record in any court. We versed, is also, to say the least, a nice charging in the affidavit that the edbeen presented on behalf of the peti- lation an insulting, contemptuous, contumelious, disrespectful cartoon or picture, a copy of which is hereto ating and meaning thereby to throw diswere before us on appeal, or, if the Gear, one of the Judges of said court, statute required the court in adjudging and the presiding Judge at both of the a contempt to explicitly set forth all trials hereinbefore named; and in said tempting to represent the former acresult might perhaps be different. But then in a ludicrous and disgraceful in the absence of such findings or of an manner of him, the said Honorable dicial capacity, as well as to prejudice of the public and jury trying said cause and that by reason of said insulting, contemptuous, contumelious and disre Circuit Court sat at the hearing of the spectful picture or cartoon, and intendcontempt case does not make the pro- ing to publish animadversions on the ceedings void. Whether they might evidence or proceedings in a pending properly all sit as a court, it is un-necessary to say. For, although dur-ing the earlier stages of the hearing and prevent the administration of jusand by knowingly publishing an

## Board of Health to Experiment Now.

HE X-ray as a cure for leprosy is the latest experiment which undoubtedly the Board of Health will next attempt. There is also another cure which will be experimented with, that discovered by Professor Fulsen of Copenhagen, and some interesting results may be expected within the year. The two suggestions given above have the merit of being made by reputable physicians of Honolulu, Dr. George Herbert and Dr. W. L. Moore, and will consequently be given more attention than has usually been the case where the Board of Health is concerned. President Sloggett announced at the board meeting yesterday that he had already discussed the subject with the physicians and added: "It is up to us to do something in this matter new." A motion that the medical members of the board act as a committee to investigate the proposed remedies for leprosy was adopted.

THE COPENHAGEN CURE. doubtedly the Board of Health will

THE COPENHAGEN CURE. The following is the letter of Dr. Moore calling attention to the Copenhagen experiments:

hagen experiments:

Dr. H. C. Sleggett, President of the Board of Health.

Dear Sir:—I wish to bring to the attention of the members of the board for consideration the advisability and practicability of attempting the amelloration and perhaps cure of certain leprous manifestations by the use of the apparatus devised by Prof. Fulsen of Copenhagen, and employed by him in treatment of lupus.

I believe that in the earlier and more superficial lesions of leprosy it would prove of decided value, perhaps modified to suit the conditions and taken in connection with other treatment, a great deal might be accomplished.

Respectfully,

W. L. MOORE.

THE X-RAY EXPERIMENTS.

Dr. Herbert's letter bearing on the

Dr. Herbert's letter bearing on the subject was as follows:

C. Sloggett, President Board of Health. Health.

Dear Doctor:—There has been so much accomplished in the Eastern States and in Europe during the last year in the treatment of tubercular diseases of the skin, and subcellular tissue, by the application of the X-rays, and recognizing the similarity of this condition with that of tubercular leprosy, I wish to express an opinion that I firmly believe that experimentation scientifically conducted here with a good static machine and X-ray outfit, would not only be a proper and up-to-The case as a whole presents many would not only be a proper and up-to-date experiment, but also productive of results, the limit of which may be be-

we regard leprosy as due to systemic infection, but in so many cases it has proved self-limiting, more especially, of

course, in those forms that are char-acterized by neuritis.

Affected limbs have been amputated, and the patients had no sign or recur-rence of disease. Patches excised, and no further developments. On these grounds ,therefore, I beg you to bring the subject before your honorable board for discussion. Fraternally yours,

GEORGE HERBERT.

The committee appointed by the president to consider the experiments suggested by the physicians was Dr. Sloggett, Dr. Moore and Dr. Cooper, and they will be assisted by Dr. McDonald, the Government bacteriologist, and Dr.

### KONA ESTATE IN GOOD SHAPE

Reports from Kona, brought by J. M. McChesney, who has spent the past month at the plantation, are most favorable and indicate that the period of uncertainty has been passed for the estate. The cane now being taken off is entirely from the Holualoa lands, coniguous to the mill.

Owing to a scarcity of rain there has not been enough water on the upper lands for the purpose of fluming cane down to the main line, but the prospects are for more rain very soon now. The mill is not entirely finished as some parts have been ordered from this city and will go back in the Maura Los. The railroad also needs some little work before it is done, but this is expected to be completed during the present

Up to the present time there have been manufactured and shipped some 4200 bags of sugar. This figure would have been much greater if the will had been complete. There has appeared no evidence of dissatisfaction on the part of the laborers, but on the contrary all the work is being pushed ahead and the men are getting what they are entitled to out of the sales of sugar.

While the progress of the planting for the crop of next year was delayed by the action early in the spring, there is much work being done for the crop of 1904. There is some clearing going on and the planting of this new land will begin within the next two weeks. The land on which cane is now being cut will be cultivated for long rattoons for

(Continued on Page 4.)